Supreme Court, U.S.
FILED

No. 041537 DEC 13 2004

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

DEWEY EARL JERNIGAN,

Petitioner,

vs.

CITY OF TULSA, *ex rel.*, RONALD PALMER, Chief of Police, City of Tulsa, Oklahoma,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF CIVIL APPEALS, DIVISION IV

PETITION FOR WRIT OF CERTIORARI

C. Rabon Martin, OBA #5718
Martin & Associates, P.C.
2626 Bank of America Tower
15 West Sixth Street
Tulsa, Oklahoma 74119
(918) 587-9000 telephone
(918) 587-8711 facsimile

Attorney for Petitioner

Question Presented for Review

Where Petitioner has intervened in a civil action, in which a municipality has invoked judicial supervision over the disposal of allegedly unclaimed property, in order to assert a challenge to a default judgment, stripping him and thousands of others of their property rights, without notice to any of the owners having been given or attempted, because of a perjured police affidavit, falsely claiming said owners to all be unknown, does a trial court's *sua sponte* dismissal of Petitioner's challenge, prior to discovery and without notice or hearing, deprive Petitioner and his class members of substantive and procedural due process of law?

TABLE OF CONTENTS

Petition for Writ of Certiorari 4
Opinions Below 4

Statement of Jurisdiction 4

Statutory Citation:
28 U.S.C. § 1257 5

Constitutional and Statutory Provisions Involved 5

Statutory Citation:
11 O.S. § 34-104 5

Statement of the Case 7

Statutory Citation:
11 O.S. § 34-104 8

Argument for Allowance of Writ 16

Case Citations:
Huch v. U.S., 439 U.S. 1007,
99 S.Ct. 622, 58 L.Ed.2d 684 (1978) 16

Huch, at 1012 17

Certificate of Service 17

PETITION FOR WRIT OF CERTIORARI

COMES NOW the Petitioner, Dewey Earl Jernigan, by his undersigned attorney, and petitions this Honorable Court for issuance of a Writ of Certiorari to the Oklahoma Court of Civil Appeals, Division IV, to review the decision of that Court, filed March 23, 2004.

Opinions Below

There were no published decisions. Copies of the order of dismissal of the trial court and the order affirming the same of the Oklahoma Court of Civil Appeals are included in the Appendix.

Statement of Jurisdiction

The *sua sponte* decision of the trial court, dismissing this action, was filed on February 3, 2003. Petitioner prosecuted a timely appeal, by filing his Petition in Error with the Clerk of the Oklahoma Supreme Court within thirty (30) days thereof, on February 20, 2003. The

Supreme Court then assigned the matter to Division IV of the Oklahoma Court of Civil Appeals on December 18, 2003. That court filed its opinion, affirming the trial court's *sua sponte* dismissal, on March 23, 2004. Petitioner filed a timely Petition for Rehearing on April 1, 2004, and the same was denied on May 17, 2004.

Petitioner filed a timely petition with the Clerk of the Oklahoma Supreme Court, asking that court to issue a writ of certiorari to Division IV of the Court of Civil Appeals, to review that Court's decision, on June 7, 2004, within ninety (90) days of the issuance of that court's order denying rehearing. On September 13, 2004, the Oklahoma Supreme Court filed its decision, denying the petition for certiorari. Petitioner now submits his timely Petition for Writ of Certiorari, within ninety (90) days of the Oklahoma Supreme Court's denial of certiorari.

This Honorable Court has authority to review cases by issuing writs of certiorari pursuant to 28 U.S.C. § 1257, and Rule 10 of the Rules of this Honorable Court.

Constitutional and Statutory Provisions Involved

A. Constitutional Provisions.

U.S. Const., Amendment V,

> "No person . . . shall be deprived of . . . property, without due process of law . . ."

B. Statutory Provisions.

11 O.S. § 34-104,

> "A. Any chief of police is authorized to dispose of personal property or money or legal tender as provided in this section or the charter of the municipality, which has come into the possession of the chief of police in any manner if:
>
> 1. The owner of the personal property or money or legal tender is unknown or has not claimed the property;
>
> 2. The property or money or legal tender has been in the custody of the chief of police for at least ninety (90) days; and

3. The property or money or legal tender or any part thereof is no longer needed to be held as evidence or for any other purpose in connection with any litigation.

B. The chief of police shall file an application in the district court in which the situs of government of the municipality is located requesting the authority of the court to conduct a sale of such personal property which has a fair market value of more than its face value. The chief of police shall attach to the application a list describing such property including any identifying numbers and marks, the date the property came into the possession of the chief of police, and the name of the owner and the person in last possession, if different, and the address of such person, if known. The court shall set the application for hearing not less than ten (10) days nor more than twenty (20) days after filing of the application.

C. In any instance where the property has an actual or apparent value of more than One Hundred Dollars ($100.00), at least ten (10) days prior to the date of the hearing, notice of the hearing shall be sent by certified mail to each owner at the address as listed in the application. If the owner of any property with an actual or apparent value exceeding Five Hundred

Dollars ($500.00) is unable to be served by certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is in custody. The notice shall contain a brief description of the property of the owner and the place and date of the hearing. The notice shall be posted at the assigned place for the posting of municipal notices, and at two other public places in the municipality.

D. If no owner appears and establishes ownership to the property at the hearing, the court shall enter an order . . . to sell the personal property for cash to the highest bidder . . . After payment of court costs and other expenses, the remainder of money received from the sale of the personal property shall be deposited in the municipal general fund.

(Sections E-G omitted, as irrelevant)

Statement of the Case

On September 7, 1996, Petitioner was arrested by Tulsa, Oklahoma, Police Officers for Unlawful Delivery of Marijuana, after two or more prior convictions, and

charged with that crime by Information in Tulsa County District Court on September 12, 1996.

On September 17, 1996, the District Attorney brought a civil action against Petitioner under Tulsa County Case No. CJ-1996-4204, seeking forfeiture of money and other property seized from the Petitioner, at the time of his arrest.

Petitioner had prevailed, in part, at a pretrial suppression hearing, in which the court held his arrest and the seizure of his money to have been unlawful. On April 25, 2002, Petitioner secured representation by private counsel and a short time later, on May 15, 2002, based upon the aforementioned ruling, a settlement was successfully negotiated, in which Petitioner's currency in the amount of $1,650.00 was ordered returned, and the balance of his property forfeited.

However, when Jernigan's attorney took a certified copy of the Court's order to the Police Property Room, he

was told that the money was "gone," and the officer referred counsel to the final judgment of the trial court, int this case, No. CJ-01-5368

Upon reviewing the court file in this case, Petitioner's counsel learned that, on October 9, 2001, the City of Tulsa filed its application herein, pursuant to 11 O.S. § 34-104, seeking judicial supervision and approval for the disposition of certain allegedly abandoned and/or unclaimed property, described in Exhibit "A" attached thereto. In this Application, it is alleged that each item in Exhibit "A" has been in the custody of the Tulsa Police Department for at least six (6) months and that its continued retention is not needed "for evidentiary purposes or for any other purpose in connection with any litigation." The full extent of the falsity of this allegation is unknown, but it is certain that Petitioner's currency was already the subject of litigation in Case No. CJ-1996-4204, when the City filed its application. On the same day, District Judge

Sharron Bubenik entered an order, which was filed the following day, setting the City's application for hearing and directing the issuance of notice to identified property owners and members of the general public. In this order, the Court directed that every known owner be given notice by certified mail, at least ten (10) days prior to the date of the hearing. With respect to any owner of money or property having an actual or reasonably apparent value in excess of $500.00, who could not be personally served, it was ordered that notice be published in a newspaper of general circulation.

On October 22, 2001, staff attorneys for the City of Tulsa prepared, and caused to be executed, an Affidavit of Mailing and Public Posting, in which Tulsa Police Department Sergeant Whitney Allen, Supervisor of the Tulsa Police Department Property Room, stated under oath that, "no certified notice was provided to the owners . . . because they are unknown." Further, Sergeant Allen

swore that, "no item of listed property has an actual or apparent present value exceeding $500.00; therefore, no publication notice was given."

On that same date, Judge Bubenik signed another order proclaiming that the matter "comes on for hearing in its regular order . . . "Nothing in the City's application and nothing in the Order for Hearing signed by the had court docketed this matter for October 22, 2001, and, in truth and fact, the matter did not come on "in its regular order" on that date. In her order, Judge Bubenik adopts the perjured assertion of Sergeant Whitney Allen, that none of the owners are known, even though many of the names of the owners are set forth in Exhibit "A" to the City's application, and even though each and every item of property booked into the property room is booked under a number, which identifies it by the name and address of its owner, or the person from whom it was seized.

The trail court also accepted, at face value, the assertion affidavit of Sergeant Allen that none of the property was worth more than $500.00 (including Petitioner's $1,650.00). Further, the order contains a finding that the unknown owners of the property have failed to present themselves and assert a claim of lawful possession and are therefore deemed to have waived any claim of ownership, even though the hearing date and deadline for filing of claims of November 15, 2001, as set forth in the October 10, 2001 order, had not yet arrived.

Thus, without notice to any owner, without any opportunity to be heard and prior to the hearing date set by the court, a default judgment was taken by the City of Tulsa, transferring ownership of approximately 30,000 items identified in Exhibit "A" to its application, from those hapless owners, to the City of Tulsa, for sale at public auction, with the proceeds deposited into the City's general fund.

Likely millions of dollars were thusly stolen from tens of thousands of unsuspecting Tulsans, by their own police department -- all upon the whimsical foundation of a police officer's perjured affidavit.

Petitioner's attorney then prepared and filed on his behalf on June 11, 2002, an "Entry of Appearance, Statement of Claim, Notice of Prior Litigation, Statement of Class Representation, and Petition to Vacate Default Judgment." The City responded, challenging Petitioner's standing, denying any fraud, and denying that Petitioner's attorney ever contacted the Tulsa Police Department to claim the money ordered returned to him. The factual dispute over whether or not Petitioner's attorney went to the property room and tried to pick up his money, only to be told that it was "gone," was never resolved or even litigated in these proceedings.

Next, in order to inquire into the role of the two (2) Assistant Municipal Attorneys signing off on the City's

pleadings in this matter, deposition notices were issued and served upon them, prompting a Motion to Quash the Subpoena from the City of Tulsa accompanied by a Motion to Impose Sanctions upon Petitioner's attorney. On October 30, 2002, the court issued an order setting a hearing on the City of Tulsa's Motion for Sanctions for November 22, 2002, at 1:30 p.m.

When the attorneys arrived for a hearing on the Motion for Sanctions, they were invited into chambers and the court announced that, in a self-contradictory ruling, she was both denying Petitioner's Application to Vacate the Default Judgment, by which the City of Tulsa took his money, and ordering the City of Tulsa to give him his money back, and dismissing Petitioner's other claims, *sua sponte*. The trial court simply swept the entire matter under the rug and sent everyone home, without notice or hearing that the merits would be even entertained, let alone disposed of, without discovery or trial.

On February 20, 2003, Petitioner filed a timely Petition in Error to appeal the trial court's *sua sponte* dismissal to the Oklahoma Supreme Court, in which Petitioner first raised his complaint that the trial court's *sua sponte* dismissal of his action denied him due process of law.

On March 23, 2004, after the issues had been briefed by the parties, Division IV of the Court of Civil Appeals of the State of Oklahoma issued an opinion, which begins with a section headed, "FACTS." This is curious, since no record of any "facts" was ever made below. There were no proceedings below. There was no trial. There was no discovery. The only record from which any alleged facts could be drawn is the verified application of Jernigan to vacate the default judgment. The Court of Appeals stated,

> "The record reflects that Owner's cash was not part of the items included in the October 22, 2001, order."

It is alarming, if not shocking, that the Court of Appeals could include such a recital, as a "fact," in the face of Petitioner's verified allegation that his currency was, indeed, confiscated by the October 22, 2001, order.

Next, the Court of Civil Appeals recited:

> "However it is unclear whether Owner has ever reclaimed the cash."

The sequence of events giving rise to the appeal are understandably "unclear," because there were no proceedings and there was no record ever made.

Next, the Court of Civil Appeals undertook to recite the "issue," as follows:

> "Thus, the sole issue before this court is whether Owner [Petitioner herein] was denied due process ***when property was disposed of*** without actual notice to the owners." (emphasis added)

In Petitioner's Brief, however, the sole issue presented for review is set forth with clarity and precision:

> "Was Appellant deprived of procedural due process of law when the trial court disposed of all issues without notice or hearing?"

The Court of Appeals completely missed the point. Petitioner's appeal was not focused upon the merits of Petitioner's claims, as raised in his Entry of Appearance, Statement of Claim, Notice of Prior Litigation, Statement of Class Representation and Petition to Vacate Default Judgment. Those claims were never litigated and no judgment upon the merits thereof was ever rendered below. Petitioner's complaint was focused upon the trial court refusing to even give him a day in court on those issues. He complained of the trial court's *sua sponte* dismissal of everything he had raised, before discovery, at a proceeding which had been noticed *only* on the City's motion for sanctions against Petitioner's attorney.

That the Court of Appeals had mis-apprehended or mis-stated the issue on appeal was respectfully pointed out

in a timely Petition for Rehearing. The Petition was denied without comment.

A timely Petition for Certiorari was filed with the Clerk of the Oklahoma Supreme Court on June 7, 2004, and denied on September 13, 2004, with two (2) Justices dissenting. The mandate was issued September 24, 2004, and spread of record October 4, 2004.

Argument for Allowance of Writ

Little, if any, argument is called for. The facts themselves eloquently present as compelling a case as imaginable for this Honorable Court's intervention.

Again and again, Dewey Jernigan approached his State judiciary – at every level-- complaining of his property being taken from him by fraud and perjury, without notice or hearing. Again and again he was not only denied relief, but even an opportunity to go to court

and litigate the issue. He no doubt feels much like Sisyphus, as characterized in the dissenting opinion of Mr. Justice Rehnquist, in *Huch v. U.S.*, 439 U.S. 1007, 99 S.Ct. 622, 58 L.Ed.2d 684 (1978), the mythical King of Corinth who was sentenced by Zeus to an eternity in Hades trying to roll a rock uphill, which forever rolled back upon him. So has it been with each resort attempted by Petitioner to the various courts of Oklahoma, from his local district court, to the Supreme Court of the State of Oklahoma. None would hear him out. None would even allow him a day in court to plead his cause. Such a result, in the view of Mr. Justice Rehnquist, represents a departure from the accepted and usual course of judicial proceedings, sufficient to warrant a grant of certiorari.

Huch, at 1012. The Courts of Oklahoma have closed their eyes to perjury, corruption, and the denial of due process. It is difficult to envision a circumstance which cries out more eloquently and compellingly for this

Honorable Court's exercise of its supervisory authority over these inferior courts.

Martin & Associates, P.C.,
Attorneys for Petitioner

C. Rabon Martin, OBA #5718
2626 Bank of America Tower
15 West Sixth Street
Tulsa, Oklahoma 74119
(918)-587-9000 telephone
(918)-587-8711 facsimile

CERTIFICATE OF SERVICE

This is to certify that on the 10th day of February, 2004, the foregoing instrument was served upon the following by United States Mail, postage prepaid:

Ms. Valerie J. Evans
Assistant City Attorney
200 Civic Center, Room 316
Tulsa, Oklahoma 74103

Attorney for Respondent City of Tulsa

C. Rabon Martin

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

CITY OF TULSA, ex rel. RONALD PALMER, Chief of Police, City of Tulsa, Oklahoma, Plaintiff Appellee, vs. CERTAIN PROPERTY, Whether Stolen, Embezzled or Otherwise Obtained, Being Unknown or Unclaimed, Defendant, and DEWEY F. JERNIGAN, Intervenor/Appellant.	Case No.: 98,886

APPEAL FROM THE DISTRICT COURT
OF TULSA COUNTY, OKLAHOMA

HONORABLE SHARRON K. BUBENIK, TRIAL JUDGE

AFFIRMED

For
Martha Rupp Carter
CITY ATTORNEY
Valerie J. Evans
ASSISTANT CITY ATTORNEY
Tulsa, Oklahoma
For Plaintiff/Appellee

C. Rabon Martin
Tulsa, Oklahoma
For Interventor/Appellant

OPINION FROM JERRY L. GOODMAN, JUDGE:

Appellant Dewey F. Jernigan (Owner) appeals the trial court's February 3, 2003, order denying Owner's motion to vacate an earlier order of the trial court which permitted the City of Tulsa (City) to dispose of certain unclaimed property from its police property room. Based upon our review of the facts and applicable law, we affirm.

FACTS

In September 1996 Owner was arrested by the Tulsa police. Certain personal items, including cash, drugs, and other illicit items, were seized. Said items were kept as evidence by City.

On October 9, 2001, City filed an application to obtain an order from the district court to dispose of over 30,000 items of property located by the police property room. Statutory notice was given, and on October 22, 2001, an order was filed authorizing City to dispose of the items.

The record reflects that Owner's cash was not part of the items included in the October 22, 2001, order. In fact, on May 15, 2002, an order was filed ordering the release of the cash to Owner or to his attorney. This order was also endorsed by Owner's attorney. However it is unclear whether Owner has ever reclaimed the cash.

Nevertheless, Owner filed suit against City, seeking to bring a class action on behalf of all the unknown persons whose property was disposed, and alleging that violations or due process rights had occurred. Ultimately, in an order filed February 3, 2003, the trial court declined to certify the matter as a class action; denied the imposition of sanctions against Owner's attorney; and again ordered City to return Owner's cash. Owner appeals.

ISSUES

Although Owner's petition for certiorari raised several issues, only one issue is preserved in his appellate brief in chief and reply brief[1]. All other propositions of error are deemed waived. Assignments of error which are not argued or supported in the brief with Citations of authority will generally be treated as waived. *Peters v. Golden Oil Co.,* 1979 OK 123, 600 P.2d 330; *Messler* v. *Simmons Gun Specialties, Inc.,* 1984 OK 35,687 P.2d 121. Thus, the sole issue before this court is whether Owner was denied due process when property was disposed of without actual notice to the owners.

We hold no error occurred. Owner's property was not part of the items disposed of by City in 2001. Indeed, City has retained possession of and is under a court order to return certain items to Owner. However, Owner has yet to reclaim his property.

---

[1] Reserved for our consideration pursuant to the December 16, 2003, order of the Oklahoma Supreme Court is Owner's motion to file a reply brief out of time. Said motion was granted by this Court on February 6, 2004. The brief was filed of record on March 12,2004.

While we agree with the general proposition that the owner of property is entitled to notice before the property is disposed of by a government agency, such is not the case here. See *McDaneld v. Lynn Hickey Dodge, Inc.*, 1999 OK 30, 979 P .2d 252 n.21.[2] Further, questions of jurisdiction may be raised at any time, either in the trial court or on appeal; and even in the absence of an inquiry by the litigants, the court may examine jurisdiction. *Durham* v. Sharum, 1950 OK 232, 222 P.2d 1029; *Wright* v. *Kemper,* 1929 OK 175 ,279 P. 346.

In this case, Owner's property was never in jeopardy. It has remained City's possession and is awaiting reclamation by Owner. Indeed, Owner has two court orders permitting return of the property. Owner was not entitled to notice for the simple reason he had no property or legally protected interest in danger of being seized. He has no standing.

> At a minimum standing is composed of three elements. These components are: (1) a legally protected
> interest which must have been injured in fact

---

[2]The standard of fairness exacted by the Due Process Clause mandates that notice meeting minimum constitutional standards precede judicial action. *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314-15, 70 S.Ct. 652, 657-58 (1950); *Bailey v. Campbe./l,* 1991 OK 67, 862P.2d 461; *Cate v. Archon Oil CD.,* 1985 OK 15, 695 P.2d 1352; *Bomfordv. Socony Mobil Oil Co.,* 1968 OK 43,440 P .2d 713. Notice must be reasonably calcu.lated to inform interested parties of every critical stage so as to afford them an opportunity to meet the issues at a meaningful time and in a meaningful manner. *Armstrong v.. Manzo,* 380 U;S. 545,552, 85 S.Ct. 1187, 1190-91 {1965); *Peralta v. Heights Med. Ctr., Inc.,* 485 U.S. 80, 84-85, 108 S.Ct. 896, 899 (1988). *See alsD Shamblin v. Beasley,* 1998 OK 88,967 P.2d 1200; *Capitol Federal Savings Bank v. Bewley,* 1990 OK 79,795 P .2d 1051.

– i.e., an injury which is actual, concrete and not conjectural in nature, (2) a causal nexus between the injury and the complained of conduct, and {3) a likelihood, as opposed to mere speculation, that the injury will be redressed by a favorable decision; (Italics omitted.) *Cities Servo Co. V. Gulf Corp.,* 1999 OK 16, ¶ 3, 976 P.2d 545, 547.

The trial court's February 3, 2003, order is affirmed.

City's Motion for
Attorney's Fee and Costs

The final sentence of the conclusion of City's brief-in-chief requests award of an appeal-related attorney's fees and costs. City fails to cite any statutory or decisional basis therefor, and its request is not set out in a specifically identified separate portion of the brief. As such, the request is in violation of Okla.Sup.Ct.R. 1.14, 12 O.S. 2001, ch. 15, app. 1. *See* Okla.Sup.Ct.R. 1.1(b), 12 O.S. 2001, ch. 15, app. 1. City's motion is therefore denied without prejudice.

AFFIRMED.

TAYLOR, P.J., and STUBBLEFIELD, J., concur.

March 23, 2004

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA	)
TIMOTHY H. HARRIS,	)
District Attorney	)
City of Tulsa, Oklahoma,	)
	)
Plaintiff	)
	)
v.	)
	)
TWO THOUSAND THIRTY,	)
DOLLARS, ($2,030.00),	)**No.CJ-1996-4204**
	)
AND	)
ONE (1) MOTOROLA CELL	)
PHONE,	)
ONE (1) RUGER 9MM PISTOL,	)
ONE (1) OHAUS SCALE,	)
ONE (1) PROGRESSIVE	)
SCALE,	)
Defendant.	) **Judge Frizzell**

FINAL AGREED ORDER FORFEITING IN PART AND REMITTING IN PART

NOW, on the 7th day of May, 2002, this matter comes on for consideration pursuant to Notice of Seizure and Forfeiture filed by Plaintiff, State of Oklahoma. The State is present and represented by Kim Hall, Assistant District Attorney. Claimants, Tim Foster and Diana Legg, appear

not, nor have they filed an Answer in this case. Claimant, Dewey F. Jernigan, appears by and through his attorneys, Mr. W. Creekmore Wallace and Rabon Martin. The Court, after reviewing the statements of Counsel in this matter, makes the following findings:

1. On September 17, 1996, copies of the Notice of Seizure and Forfeiture were sent by certified mail to the Claimant's at their last known addresses. The Notice sent to Claimant, Jernigan, was received by "D. Ledbetter". The Notice sent to Claimant, Legge, was received by "Charley B". On October 9, 1996, Claimants Jernigan and Foster were personally served a copy of the Notice by Assistant District Attorney, Larry Edwards. Claimants, Foster and Legge, have failed to file an Answer within forty-five (45) days as required by statute.

2. On November 8, 1996, an Answer was filed on behalf of Claimant Donald Groat, by and through his attorney, Mr. W. Creekmore Wallace, and the Defendant Ruger was released to him. On November 8, 1996, an

Answer was filed on behalf of Claimant Jernigan, by and through his attorney, Mr. W. Creekmore Wallace. On December 8, 2001, an order setting hearing was filed and the case was set for January 31, 2002. After many passes, the cause was passed to March 8, 2002. On April 25, 2002, an Entry of Appearance was filed on behalf of Claimant Jernigan, by Mr. Rabon Martin.

3. The parties have agreed to stipulate that the Court could find by a preponderance of the evidence that the Defendant **THREE HUNDRED EIGHTY DOLLARS, ($380.00)**, was money that was furnished or intended to be furnished in exchange for a controlled dangerous substance and therefore, pursuant to 63 O.S. §2-501 et. seq., should be forfeited to the Plaintiff, State of Oklahoma.

4. The parties have further agreed to stipulate that the Court could find by a preponderance of evidence that the remaining Defendant **ONE THOUSAND SIX HUNDRED FIFTY DOLLARS, ($1,650.00)**, was not furnished or intended to be furnished in exchange for a

controlled dangerous substance and therefore, shall be released to Claimant, Dewey Jernigan, or his attorney, Rabon Martin.

5. Parties have further agreed to stipulate that the Court could find by a preponderance of the evidence that the Defendant **ONE (1) MOTOROLA CELL PHONE, ONE (1) OHAUS SCALE, AND ONE (1) PROGRESSIVE SCALE**, were used or intended to be used to facilitate in the distribution of controlled dangerous substances and therefore, pursuant to 63 O.S. §2-501 et. seq., should be forfeited to the Plaintiff, State of Oklahoma.

IT IS THEREFORE THE ORDER OF THE COURT that the Defendant **THREE HUNDRED EIGHTY DOLLARS ($380.00)**, is and shall be forfeited to the Plaintiff, State of Oklahoma, to be placed in the revolving fund maintained by the office of the District Attorney for the purpose of enforcing the laws concerning controlled dangerous substances.

IT IS THEREFORE THE FURTHER ORDER

OF THE COURT that the Defendant **ONE THOUSAND SIX HUNDRED AND FIFTY DOLLARS, ($1,650.00),** is and shall be released to Claimant Dewey Jernigan, or his attorney, Mr. Rabon Martin.

IT IS THEREFORE THE FURTHER ORDER OF THE COURT that the Defendants **ONE (1) MOTOROLA CELL PHONE, ONE (1) OHAUS SCALE, AND ONE (1) PROGRESSIVE SCALE,** are and shall be forfeited to the Plaintiff, State of Oklahoma. Pursuant to 63 O.S. §2-501 et. seq., the Court orders said property shall be retained by the seizing agency, the Tulsa Police Department, for its official use. In the event the seizing agency no longer use said property, the Court orders Sheriff of Tulsa County to sell said property under Judgment, as on sale upon execution, and place the proceeds from such sale in the revolving fund maintained by the office of the District Attorney for the purpose of enforcing the laws concerning controlled dangerous substances. In the alternative, the Court orders said

property be destroyed under the direction of the seizing agency.

IT IS SO ORDERED.

S / Gregory Frizzell

GREGORY FRIZZELL
DISTRICT COURT JUDGE

APPROVED AS TO FORM:

S / Kim Hall

KIM HALL, OBA #16100
ASSISTANT DISTRICT ATTORNEY

S / C. Rabon Martin

MR. C. RABON MARTIN, OBA #5718
Attorney for Claimant Dewey F. Jernigan

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

CITY OF TULSA, ex rel., RONALD PALMER, Chief of Police, City of Tulsa, Oklahoma,	)
Plaintiff,	)
v.	) **CaseNo.: CJ-2001-05368**)**Judge Sharron**) **K. Bubenik**
CERTAIN PROPERTY, whether stolen, embezzled or otherwise obtained, being unknown or unclaimed,	)
Defendant.	) **No. CJ-2001-5368**)**Judge**)**Sharron**)**K. Bubenik**

ORDER AUTHORIZING SALE OF PROPERTY AND TRANSFERRING OWNERSHIP OF CERTAIN PROPERTY TO THE CITY OF TULSA

NOW on this October 22, 2001, this matter comes on for hearing in its regular order pursuant to the Order Setting Application for Hearing and Directing Issuance of Notice to

Identified Property Owners and Members of the General Public entered herein on the 10th day of October, 2001. Applicant, City of Tulsa, Oklahoma, appears by and through its attorney of record, David A. Shapiro, Assistant City Attorney.

The Court, being familiar with the Application for Disposition of Personal Property, Money and Legal Tender ("Application") presented by the City of Tulsa, *ex. rel.*, Ronald Palmer, Chief of Police of the City of Tulsa, Oklahoma ("City"), and having previously entered herein orders directing that specific actions be taken by the City prior to this date, finds:

1. Certified notice was not required to be given to the owners of the property listed on Exhibit "A" of the City's Application and in the possession of the Tulsa Police Department because the owners of all property with an actual or apparent present value exceeding $25.00 were unknown.

2. That no individual item of listed property has

an actual or apparent present value exceeding $500.00, and no publication notice has been given with regard to any such item of listed property.

3. That notice of this hearing has been duly posted in three public places as required by 11 O.S. § 34-104 (C); in that no persons appeared to claim ownership of any of the items of personal property listed in Exhibit "A" of the City's Application, this Court finds:

4. That the unknown owners of property who have failed to present themselves and assert claim of lawful possession of said property are deemed by the Court to have waived any claim of ownership to the unclaimed property presently remaining for disposition as set forth by Exhibit "A" of the City's Application;

5. With regard to unclaimed firearms listed in Exhibit "A", all or any of such firearms may be sold, withheld from public sale as determined by the Chief of Police of the City of Tulsa.

6. With regard to dangerous weapons, narcotic or poisonous drugs, explosives, or Any property of any kind or character, which the possession of is prohibited by law listed on Exhibit "A", all or any such items may be destroyed as determined by the Chief of Police.

7. That with regard to all remaining items of personal property remaining unclaimed, it is proper for the Court to order the Chief of Police donate the property having value of less than Five Hundred Dollars ($500.00) to a non-profit corporation as defined in Title 18 of the Oklahoma Statutes for use by needy families or to sell said personal property for cash to the highest bidder, after at least five days advance notice of said sale has been duly published;

8. With regard to all money and legal tender listed upon City's Application Exhibit "A" remaining unclaimed, the court orders the Chief of Police of the City of Tulsa to transfer said money for deposit in the Municipal General Fund of the City of Tulsa.

9. All monies received from the sale of personal property listed on Exhibit "A" shall Pay for the expenses of the auction and the remaining monies shall be deposited into the Municipal General Fund of the City of Tulsa;

IT IS, THEREFORE, ORDERED BY THE COURT that the items of personal property listed in Exhibit "A" attached to City's Application, are authorized to be donated or sold to the public to the highest bidder for cash.

FURTHER, IT IS ORDERED that upon the sale of all listed property, the Chief of Police of the City of Tulsa that all monies received from the sale minus expenses incurred as a result of the sale be deposited in the City of Tulsa Municipal General Fund.

IT IS FURTHER ORDERED that upon the occurrence of donation or sale of the listed property, the Chief of Police of the City of Tulsa shall make a return of the donation or sale to the Court setting forth the item donated, or if sold, itemizing and accounting for all monies received from the sale and all expenses incurred as a result of the sale and requesting a final order of the court confirming said donation or sale and vesting title to all transferred property in the recipient of the donated item or purchaser of the property.

Done in open Court this 22nd day of October, 2001.

_____

JUDGE OF THE DISTRICT COURT

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

CITY OF TULSA, ex rel., RONALD PALMER, Chief of Police, City of Tulsa, Oklahoma,	)
Plaintiff,	)
v.	)
CERTAIN PROPERTY, whether stolen, embezzled or otherwise obtained, being unknown or unclaimed,	) No. CJ-2001-5368
Defendant.	)Judge Sharron K. Bubenik

ENTRY OF APPEARANCE, STATEMENT OF CLAIM, NOTICE OF PRIOR LITIGATION, STATEMENT OF CLASSREPRESENTATION AND PETITION TO VACATE DEFAULT JUDGMENT

COMES NOW the Claimant, Dewey F. Jernigan, by his undersigned attorney, and enters his appearance herein, individually and on behalf of all others similarly situated, which class Claimant alleges to include all of the owners of all of the property described in Exhibit "A" to the Plaintiff's Petition, and states his claim to a certain quantum of United States currency, listed on page 118 thereof, a copy of which

is attached hereto, in the amount of $1,650.00.

Further, the Claimant petitions this Honorable Court, on his own behalf and on behalf of all others similarly situated, for an order vacating and setting aside the default judgment of forfeiture of the property described in Exhibit "A," attached to the Plaintiff's Petition, to the Plaintiff City of Tulsa, rendered on October 22, 2001, on account of fraud, practiced by successful Plaintiff, in the procurement of said judgment, in the particulars hereinafter set forth, to wit:

1. October 9, 2001, this action was filed by and on behalf of the Plaintiff City of Tulsa, purportedly seeking "judicial supervision" over the disposition of certain property, money and legal tender, then presently secured in the property room of the Tulsa Police Department.

2. The Plaintiff's application falsely alleges that the list of property items in Exhibit "A" contains, " . . . the name and address, if known, of any person presently assumed to own any of the itemized property." In truth and fact, no such

list of names and/or addresses is included in Exhibit "A."

3. Further, the application of the Plaintiff falsely alleges that, "The owner of said money, currency or legal tender is unknown." In truth and fact, in the case of seized money or property (as in the case of this Claimant), the City of Tulsa maintains records, containing the names and addresses of the person or persons from whom said property and/or money was seized. Further, in the case of stolen property recovered by the Tulsa Police Department, the City of Tulsa maintains reports of thefts, including the names and addresses of the owner of the property stolen, and a description of the stolen property, often including serial numbers, against which cross checks can be run to determine the names and/or address of the owner or owners, from whom said property or money was stolen.

4. Further, the Plaintiff's application falsely alleges that the continued retention of the property described in Exhibit "A," ". . . is not needed for evidentiary purposes or for any other purpose in connection with any litigation." In

truth and fact, since 1996, a civil action has been pending in the District Court of Tulsa County, under cause number CJ-1996-4204, in which the ownership said $1,650.00, seized from this Claimant, was being litigated, investing the assigned District Judge, Gregory K. Frizzell, with exclusive jurisdiction over said currency.

5. Concurrently with the filing of the application herein, counsel for the Plaintiff prepared and secured the signature of this Court on an order, setting the application for hearing and directing the issuance of notice to the owners of the property described in Exhibit "A," and also to directing notice to the general public by newspaper publication and posting, and setting the Plaintiff's application for hearing on November 15, at 2:30 o'clock, p.m.

6. Then, only two (2) days after the Court's order for notice and posting was issued, Tulsa Police Sergeant Whitney Allen executed an "Affidavit of Mailing and Public Posting," in which Sergeant Allen falsely states,

under oath, that, "No certified notice was provided to the owners of any property listed . . . because they are unknown." Further, said affiant falsely states, under oath, that, "No item of listed property has an actual or apparent value exceeding $500.00, therefore no publication notice was given." In truth and fact, the owners of property listed on Exhibit "A" are not unknown. In many cases, the names and addresses of the property owners are readily ascertainable from records maintained by the Tulsa Police Department. Furthermore, in truth and fact, many of the items of property listed in Exhibit "A" have a known or apparent value exceeding $500.00, particularly this Claimant's currency in the mount of $1,650.00.

7. Notwithstanding the order of the Court setting this matter for hearing on November 15, at 2:30 p.m., on October 22, 2001, counsel for Plaintiff drafted, secured the signature of the Court upon, and filed, a certain order, purporting to authorize the City of Tulsa to sell certain of the property and transferring ownership of the remainder of

said property to the City of Tulsa. Said order recites that, " . . . on this October 22, 2001, this matter comes on for hearing in its regular order . . ." In truth and fact, the matter was regularly set for hearing on November 15, and what little notice was imparted by posting gave no indication that the matter would be entertained by Court on October 22, rather than November 15, as stated therein.

8. Notwithstanding the literally thousands upon thousands of items of personal property listed, not one owner was notified and not one owner came forward to assert a claim. The City of Tulsa confiscated the entirety of the approximately 30,000 items listed in Exhibit "A," likely worth millions of dollars, all without one owner ever receiving actual notice or an opportunity to be heard, all on the strength of the false affidavit of Sergeant Whitney Allen that the owners of these thousands of items of property were unknown, and that none of the property had a value in excess of $500.00, including this Claimant's $1,650.00.

The false allegations set forth in the City's Application for Disposition of Personal Property, the irregularities surrounding notice and hearing on this matter, including the disposition of the case on the merits on a date other than that specified in the notice of hearing, the material misrepresentations under oath of Sergeant Whitney Allen in the "Affidavit of Mailing and Public Posting," and the irregularities surrounding the procurement of the order authorizing sale of property and transferring ownership of certain property to the City of Tulsa, constitute fraud on the part of the City of Tulsa in securing said judgment, as contemplated in 12 O.S. § 1031 (4), empowering the District Court to vacate or modify its own judgments, for fraud, practiced by the successful party in obtaining a judgment or order.

The fraud which, under 12 O.S. § 1031 (4), will justify a court in vacating or setting aside a judgment or order, is that type of misrepresentation which prevents the other party from fully and fairly presenting his side of the

case, or fraud practiced on the Court. *In re: 1974 Mercury Cougar*, 581 P.2d 465 (Okla. 1978).

The gist of the fraud contemplated by § 1031 does not necessarily require an actual evil intention, but the loss of some right through misrepresentation which is deemed to have been caused by the prevailing party. *State ex rel., Commissioners of Land Office v. Jones*, 176 P.2d 992 (Okla. 1947).

CONCLUSION

The pleadings in this case consist of eight (8) pieces of paper, attached hereto, plus Exhibit "A." Through those eight (8) pieces of paper, the City of Tulsa has stripped away the rights of the owners of thousands upon thousands of items of personal property, worth millions upon millions of dollars – all without notice or an opportunity to be heard, and based upon the false representations by the Plaintiff that the identities of the owners of such property are unknown. The fraud practiced upon this Court is egregious, deliberate and inexcusable, tainting the entire judgment in this case.

Because of the failure of the City of Tulsa to afford proper notice to the owners of this property, they are not even aware that they have been victimized and defrauded of their property. The claims of fraud in the procurement of this judgment by the owners of the property involved are common and identical to all members of the class which Claimant takes to represent. The questions of fact and the questions of law are common to all members of the class. Claimant and Claimant's counsel are proper class representatives and will adequately protect the rights of the members of the class.

WHEREFORE, premises considered, Claimant Dewey Jernigan, by and through his undersigned attorneys, petitions this Honorable Court for an order vacating and setting aside the Court's order of October 22, 2001, entitled "ORDER AUTHORIZING SALE OF PROPERTY AND TRANSFERRING OWNERSHIP OF CERTAIN PROPERTY TO THE CITY OF TULSA."

Further, Claimant prays that he be authorized to

represent the class of persons described as the owners of the property listed in Exhibit "A" to the Plaintiff's petition and to inquire into the records and knowledge of the City of Tulsa as to the ownership thereof, and to ensure that such owners are afforded appropriate notice, and an opportunity to be heard, before their rights of ownership are stripped by and for the benefit of the Tulsa Police Department and/or the City of Tulsa, Oklahoma.

Finally, the undersigned attorney requests that, at the conclusion of this litigation, he be afforded such compensation, to be paid from such source, as the Court may deem just and proper.

Martin & Associates, P.C.
Attorneys for Claimant Dewey F. Jernigan

C. Rabon Martin, OBA #5718
Charles M. Fox, OBA #17255
Cori R. Grayson, OBA #19328
222 West Eighth Street
Tulsa, Oklahoma 74119-1401
(918) 587-9000 telephone
(918) 587-8711 facsimile

VERIFICATION

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

I, C. Rabon Martin, being of lawful age, being first duly sworn upon oath, state that I have read the foregoing instrument, and that the matters set forth therein are true and correct to the best of my knowledge.

S / C. Rabon Martin

C. Rabon Martin

Subscribed and sworn to before me this 11th day of June, 2002.

S / Mollee Johnson

Notary Public

My Commission expires:
11/22/04

CERTIFICATE OF SERVICE

This is to certify that on the 11th day of June, 2002, the foregoing instrument was served upon the following by ( )fax, ( )mail or ( )hand-delivery:

Ms. Valerie J. Evans, Esq.

Mr. Phillip J. Cazzoni, Esq.
Office of the City Attorney
200 Civic Center
Room 316
Tulsa, Oklahoma 74103

S / C. Rabon Martin

C. Rabon Martin

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

CITY OF TULSA, ex rel., RONALD PALMER, Chief of Police, City of Tulsa, Oklahoma,	)
Plaintiff,	)
v.	)
CERTAIN PROPERTY, whether stolen, embezzled or otherwise obtained, being unknown or unclaimed,	)
Defendant.	) **No. CJ-2001-5368**) **Judge Sharron**) **K. Bubenik**

JOURNAL ENTRY

ON the 22nd day of November, 2002, the Motion of the Plaintiff for imposition of sanctions upon C. Rabon Martin, counsel for Claimant Dewey F. Jernigan, comes on for hearing. The City of Tulsa appears by and through Assistant City Attorney Andrew T. Rees. Dewey F. Jernigan appears not in person, but by and through his attorneys, C. Rabon Martin and Charles M. Fox. After

hearing the arguments of counsel, the Court rendered the following decisions:

1. The Court declines to vacate the judgment heretofore rendered in this cause, in whole or in part.

2. The Court declines to certify this as a class action.

3. The City of Tulsa is ordered to return those items of personal property ordered to be returned to Jernigan in cause number CJ-1996-4204.

4. The Motion of the City of Tulsa for sanctions against C. Rabon Martin is denied.

Entered this 3rd day of February, 2003.

S/Sharron K. Bubinek

District Judge

APPROVED AS TO FORM ONLY:

Signature waived by the Court
Mr. Andrew T. Rees, Esq.
Attorney for City of Tulsa
316 City Hall
200 Civic Center
Tulsa, Oklahoma 74103

S/ C. Rabon Martin

Mr. C. Rabon Martin Esq.
Attorney for Claimant Dewey F. Jernigan
565 Wright Building
115 West Third Street
Tulsa, Oklahoma 74103
918-587-9000 telephone
918-587-8711 facsimile